January 24, 2022

The Honorable Kilolo Kijakazi, Ph.D.
Acting Commissioner
Social Security Administration
6501 Security Blvd
Baltimore, MD 21235

RE: Docket No. SSA-2021-0006 Advance Notice of Proposed Rulemaking *Addressing Certain Types of Fraud Affecting Medicare Income Related Monthly Adjusted Amounts*

Dear Dr. Kijakazi:

AARP, on behalf of our nearly 38 million members and all older Americans nationwide, strongly supports the Social Security Administration’s (SSA) efforts to provide relief for Medicare beneficiaries whose incomes are affected by fraud or theft. Hundreds of thousands of older Americans are victims of fraud each year, many of whom suffer a significant financial impact. We appreciate the opportunity to help SSA update regulations to better respond to the unique financial circumstances of fraud victims.

Medicare beneficiaries with modified adjusted gross incomes (MAGI) above a certain threshold pay higher Medicare premiums, referred to as Income Related Monthly Adjustment Amounts (IRMAA). SSA uses tax returns from two years prior when determining a person’s IRMAA status. If an individual’s MAGI decreases due to a life-changing event during the preceding two years, such that they fall below the IRMAA thresholds, they can ask for their Medicare premium to be recalculated. Under current regulations, if a person’s income changes due to fraud or theft, the individual must submit proof that a court has convicted the perpetrator of the crime in order to have their Medicare premiums reduced. This often unattainable standard results in Medicare beneficiaries paying higher premiums that are not justified by their present incomes. Our comments respond directly to the topics you request.

*Types of fraud that can affect IRMAA status*

When older adults suffer fraud losses, the losses can deplete retirement savings, regular savings, home equity loans, proceeds from reverse mortgages, and life insurance settlements. Fraud can also cause an individual’s income to appear higher than it actually is, which may falsely push them over the IRMAA thresholds. Some victims sell their homes to liquidate funds as part of the fraud. Every month, AARP’s Fraud Watch Network Helpline (877-908-3360) hears from thousands of individuals who have been victims of fraud. Each case is unique, but these are a few real-life examples of crimes that can impact a person’s income:

- A consumer had to renew his lease with the Department of Housing and Urban Development and upon doing so he was told that someone is collecting unemployment benefits in his name. The amount fraudulently collected in the individual’s name was over $13,000.
• A consumer was in touch with a timeshare management company that told her they would help sell her timeshare. Instead, they charged her $2,600 a month, did not help at all, and maxed out her credit card up to $12,000.
• A consumer received a call from someone claiming he won money. They sent him a check for $10,000, which he was told to deposit and then send money back to the scammer as part of the process. He then spent the rest of his “winnings.” He later found out from his bank that the check was no good and he had overdrawn his account by $10,000.

To the degree any of these instances affected their income for purposes of the Medicare premium calculation for higher earners, then the premium should be recalculated.

Types of evidence

We agree with SSA that convictions for fraud cases are difficult to obtain, making it too difficult for a Medicare beneficiary to prove victimization under current regulations. A common suggestion is to instead use a police report that documents stated losses as evidence that a crime occurred. However, many victims do not even know to file police reports, and when they do try to file, they are often turned away by police who wrongly believe scams are a civil matter. Part of the federal, state, and local government’s response to fraud should be greater recognition that it is a crime that deserves to be addressed. Law enforcement authorities should not be dismissive of fraud victims and treat them as if they were at fault. The community should know who to turn to in the event of fraud and feel confident that they will be taken seriously.

We believe a fairer method would be to produce paperwork that showed assets and income prior to the fraudulent encounter and following that encounter. The encounter could be a one-time experience, but often it lasts for weeks, months – even years. Producing financial documentation would be easier for the individual than producing legal documentation from police or the courts.

While it may be rare for a person’s MAGI to be impacted by fraud to such a degree that the IRMAA should be recalculated, it could have devastating financial consequences for those individuals and their families who have already suffered financial losses due to fraud. We thank you for your attention to this issue and look forward to working with you to protect Medicare beneficiaries and older Americans from the lasting effects of fraud and theft. If you have any questions, feel free to contact me, or have your staff contact Andrew Scholnick of our Government Affairs team at ascholnick@aarp.org or 202-434-3793.

Sincerely,

David Certner
Legislative Counsel & Legislative Policy Director
Government Affairs